IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

CRL.A.No. 2500 of 2006()

SC.422/2004 of ADDL.SESSIONS COURT, NORTH PARAVUR
CP.11/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

.....

APPELLANT:

RAVEENDRAN,
C.NO.5334, CENTRAL PRISON,
VIYYOOR, THRISSUR.

BY ADV. ADV.MANJU ANTONEY(STATE BRIEF)

RESPONDENTS:

THE STATE OF KERALA.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.RAMKUMAR, J.

Crl.A. No. 2500/2006

Dated this 28th day of May, 2007

JUDGMENT

In this appeal preferred from the Central Prison, Viyyoor, the appellant who was the accused in the Sessions Case No.422/2004 on the file of the Additional Sessions Court, North Paravur for offences punishable under Sections 489B and 489C read with Section 34 IPC, challenges the conviction entered and the sentence passed against him by the said Court for the aforesaid offences.

2. The case of the prosecution can be summarized as follows:-

3. On 10.7.1999 at about 8.15 p.m., inside the Alankar bar near the Aluva railway station, accused Nos. 1 and 2 (Abdul Salam and Ravindran) were each found in possession of a counterfeit note of Rupees five hundred denomination and knowing the same to be forged, the accused persons gave the said counterfeit notes at the bar for purchasing foreign liquor. The accused have thereby committed offences punishable under Sections 489B and 489C read with Section 34 IPC.

4. Out of the two accused persons, the second accused, Ravindran, (the appellant herein) alone stood trial since the first accused was allegedly absconding.

5. On the appellant pleading not guilty to the charge framed against him by the Court below for the aforementioned offence, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined eight witnesses as PWs1 to 8 and got marked five documents as Exts. P1 to P5 and two material objects as Mos 1 and 2.

6. After the close of the prosecution evidence, the appellant was questioned under Sec. 313 (1) (b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence.

7. Since the Court below did not consider this a fit case for recording an order of acquittal under Sec. 232 Cr.P.C. the appellant was, therefore, called upon to enter on his defence and to adduce any evidence which he might have in support there of. He did not adduce any defence evidence.

8. The learned Addl. Sessions Judge, after trial, as per judgment dated 7-6-2006 found the appellant guilty of the offences punishable under Secs. 489B and 489C IPC and sentenced him to rigorous imprisonment for 5 years for the conviction under Section 489B IPC and to rigorous imprisonment for three years for the conviction under Section 489C IPC. The sentences were directed to run concurrently. It is the said judgment which is assailed in this appeal.

9. I heard Advocate Sri. Manju Antony the learned counsel who defended the appellant on State Brief and Advocate Sri. K. S. Sivakumar, the learned Public Prosecutor who defended the State.

10. The only point which arises for consideration in this appeal is as to whether the conviction entered and the sentence passed against the appellant are sustainable or not ?

THE POINT:-

11. P.W.1 was the barman at Alankar bar, Aluva, where the occurrence allegedly took place. P.W.2 is the Assistant Manager of the said bar. He is an attestor to Ext.P1 mahazar prepared by the Sub Inspector while seizing the counterfeit

notes (Mos 1 and 2) PW3 was the waitor in Alankar bar. He turned hostile to the prosecution. P.W.4 was the room boy in the tourist home attached to Alankar bar. He is also the signatory to Ext.P1 mahazar. PW5 was the police constable attached to Aluva police station. He came in the company of PW6, the Sub Inspector. PW6 was the Sub Inspector of police, Aluva, who has arrested the accused persons and seized Mos 1 and 2 under Ext.P1 mahazar. PW7 was the detective Inspector, CBCID, who inter alia deposed that both the accused persons had told him that it was one Baby who had supplied the counterfeit notes to them. PW8 is the officer who conducted further investigation of the case and laid the charge.

12. After hearing both sides and after perusing the oral and documentary evidence in the case, I am not inclined to concur with the conclusions reached by the Court below in support of the conviction entered and the sentence passed against the appellant. As noted earlier, PW1 is the barman of Alankar bar at Aluva. He deposed before Court that one person came and gave a five hundred rupee note for

purchasing liquor and PW1 entertained some suspicion regarding genuineness of the note handed over by the said person. His evidence further shows that thereafter the said person went out and later came in the company of another person and that the other person handed over another five hundred rupee note which also aroused some suspicion in PW1. Even though the case of the prosecution is that the appellant, the second accused, was the person who subsequently entered the tavern in the company of the first accused and handed over the counterfeit note of rupees five hundred denomination, PW1 who is the star witness for the prosecution did not identify the appellant standing in the dock to be the person who came subsequently in the company of the person who had initially handed over the first counterfeit five hundred rupee note. His testimony to the effect that one of the two persons had a burn scar on his face does not in any way advance the case of the prosecution since the appellant was not identified as the person who had the burn scar on the face.

13. The evidence of PW2, the Assistant Manager of

Alankar bar, is also of no avail to the prosecution. First of all, he reached the bar only after the two persons had handed over the counterfeit notes to PW1. In other words, he does not have any first hand knowledge of any of the two persons handing over the currency notes to PW1 who was the barman. His information is only through the narration made to him by PW1. Even this witness had not identified the appellant standing in the dock as the person who had subsequently entered the bar.

14. PW3, the waitor of Alankar bar turned unfriendly to the prosecution. Except saying that two persons were restrained by the police for bringing fake notes, this witness also did not identify the appellant standing in the dock as one of the two persons who had allegedly brought the counterfeit notes.

15. The position with regard to PW4, the room boy, is also no better. First of all, this witness admitted that he was the room boy in the tourist home which is distinct and different from the bar. He would say that he signed Ext.P1 mahazar from the tourist home. But the case of PW6, the Sub

Inspector, is that the mahazar was signed from the bar itself. PW4 also has not identified the appellant standing in the dock as the person who was one among the two persons who were detained in the bar for having possessed counterfeit notes.

16. PW5, the police constable who accompanied the Sub Inspector, no doubt, identified the appellant standing in the dock as one of the two persons who were arrested on 10.7.1999. He also stated that the appellant has burn scars on his face. But his knowledge about the appellant handing over the counterfeit notes to PW1 is only hearsay as narrated to him by PW1 himself who has not identified the appellant standing in the dock as one of those two persons. PW5 confessed that when the police party reached the bar, the counterfeit notes were in the hands of PW1 and it was from PW1 that the police seized the counterfeit notes.

17. The testimony of PW6, the Sub Inspector, is also to the same effect. What he has deposed is that PW1, the barman, had detained two persons for allegedly keeping possession of counterfeit notes. But Mos 1 and 2 counterfeit notes were admittedly seized by PW6 from PW1 under Ext.P1

mahazar. When PW6 has no direct knowledge regarding the handing over of the counterfeit note by the appellant to PW1, his testimony to the effect that the appellant was one among the two persons detained in the bar does not in any way help the prosecution.

18. Even if it were to be conceded that Mos 1 and 2 are counterfeit notes, a conviction under Section 489C IPC can legitimately be recorded only if it is proved that the accused was found in possession of counterfeit currency notes knowing or having reason to believe the same to be counterfeit and intending to use the same as genuine or that it may be used as genuine. Likewise, a conviction under Section 489B is possible only if it is proved that the accused sold to PW1 the counterfeit currency notes knowing or having reason to believe the same to be counterfeit. When none of the prosecution witnesses has deposed that it was the appellant standing in the dock who handed over one of the two counterfeit notes to PW1, the essential ingredient of both the offences does not stand proved. The conviction recorded and the sentence passed by the Court below overlooking the

above vital aspect of the matter cannot therefore be supported.

19. The appellant is accordingly found not guilty of the offences punishable under Secs. 489B and 489C read with Section 34 IPC and is acquitted thereunder. He is set at liberty. He shall be released from prison forthwith unless his continued detention is needed in connection with any other case.

In the result, this Criminal Appeal is allowed as above.

V.RAMKUMAR
JUDGE

mrcs

mrcs